

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0065V

UNPUBLISHED

K.P.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 9, 2022

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Tetanus Diphtheria acellular
Pertussis (Tdap) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

John Robert Howie, Jr., Howie Law, PC, Dallas, TX, for Petitioner.

Jennifer Leigh Reynaud, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 15, 2019, K.P. filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination she received on September 12, 2016. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On May 25, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On November 8, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$40,662.05 (comprised of \$40,000.00 in actual and projected pain and suffering and \$662.05, which represents

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

compensation for satisfaction of the State of Massachusetts Medicaid lien). Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner:**

- A. A lump sum payment of \$40,000.00, representing compensation for pain and suffering, in the form of a check made payable to Petitioner; and**
- B. A lump sum payment of \$662.05, representing compensation for satisfaction of the State of Massachusetts Medicaid lien, payable jointly to Petitioner and**

**Commonwealth of Massachusetts – CRU
Commonwealth of MA
Casualty Recovery
PO Box 417811
Boston, MA 02241-7811**

This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

K.P.,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-65V
Chief Special Master Corcoran
ECF

PROFFER ON AWARD OF DAMAGES

On January 15, 2019, K.P. (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), as amended, alleging that she suffered a left shoulder injury related to vaccine administration (“SIRVA”), a Table Injury, resulting from a tetanus-diphtheria-acellular pertussis (“Tdap”) vaccination she received on September 12, 2016. Petition at 1. On May 25, 2022, Chief Special Master Corcoran issued a Ruling on Entitlement, finding that petitioner was entitled to vaccine compensation for her SIRVA. *See* Ruling on Entitlement (ECF #36).

Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$40,000.00 in actual and projected pain and suffering. This amount reflects that any award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Massachusetts Medicaid lien in the amount of \$662.05, which represents full satisfaction of any

right of subrogation, assignment, claim, lien, or cause of action the State of Massachusetts may have against any individual as a result of any Medicaid payments the State of Massachusetts has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about September 12, 2016, under Title XIX of the Social Security Act.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through lump sum payments as described below and requests that the Chief Special Master's decision and the Court's judgment award the following, representing all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a):

- A. A lump sum payment of **\$40,000.00**, representing compensation for pain and suffering, in the form of a check made payable to petitioner;¹ and
- B. A lump sum payment of **\$662.05**, representing compensation for satisfaction of the State of Massachusetts Medicaid lien, payable jointly to petitioner and

Commonwealth of Massachusetts - CRU
Commonwealth of MA
Casualty Recovery
P.O. Box 417811
Boston, MA 02241-7811

Petitioner agrees to endorse this payment to the above payee.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL WISHARD
Assistant Director
Torts Branch, Civil Division

s/Jennifer L. Reynaud
JENNIFER L. REYNAUD
Senior Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-1586
Jennifer.L.Reynaud@usdoj.gov

Date: November 8, 2022